

## DOUBLE TAXATION: SHIPPING PROFITS

*Exchange of notes at Berlin September 5 and October 8, 1923, January 19, May 5, September 3, November 29, and December 11, 1924, and March 20, 1925*

*Entered into force March 20, 1925; operative from January 1, 1921*

*Operation suspended during World War II*

*Not revived with Federal Republic of Germany*

47 Stat. 2627; Executive Agreement Series 17

### EXCHANGE OF NOTES

*The Ministry for Foreign Affairs to the American Embassy*

[TRANSLATION]

FOREIGN OFFICE

No. V Steu 1496

### NOTE VERBALE

Supplementing its Note Verbale No. III A 522 of March 19 last, regarding the exemption of American shipping companies from the corporation tax, the Foreign Office has the honor to inform the Embassy of the United States of America that the Federal Minister of Finance has instructed the financial authorities, in the case of commercial companies whose seat and place of direction is in the United States of America, not to subject to the corporation tax the income which comes exclusively from the operation of ships and not to demand a corporation-tax declaration as to the above-mentioned from the North American companies which maintain in Germany a branch office, any other place of operation, or a permanent representative. This instruction was issued on condition of reciprocity on the part of the United States and under the reservation that it may be recalled at any time.

The said Minister has furthermore declared his readiness to grant the favored treatment accorded to North American shipping companies also to citizens (individual persons) of the United States of America who carry on shipping traffic to Germany, if the Government of the United States of America grants reciprocity in the same degree.

The Foreign Office would be grateful to the Embassy of the United States of America if the latter would report the above to its Government with the greatest possible despatch and obtain a statement as to the attitude of the

Government toward the question of exemption from taxation of the above-described individual persons.

BERLIN, *September 5, 1923*

To the

EMBASSY OF THE UNITED STATES OF AMERICA.

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*The American Embassy to the Ministry for Foreign Affairs*

No. 536

NOTE VERBALE

The Embassy of the United States of America presents its compliments to the Ministry for Foreign Affairs and has the honor to refer to the latter's Note Verbale No. V. Steu 1496 of September 5, 1923, in which the Embassy was informed among other things that the Commonwealth Minister of Finance had issued certain instructions not to subject to the corporation tax the income derived exclusively from the operation of ships by commercial companies whose seat and place of direction are in the United States of America under certain circumstances mentioned, on condition of reciprocity on the part of the United States.

In accordance with the expressed desire of the Ministry for Foreign Affairs the contents of the note verbale under reply were communicated by cable to the Department of State, which has now sent a telegraphic reply.

In this telegram the Embassy is informed that the Treasury Department states that it is necessary for a foreign government to exempt citizens of the United States not residing in the foreign country concerned as well as domestic corporations from the tax on earnings from sources within such country derived exclusively from the operation of ships in order that such country may satisfy the equivalent exemption provision of the section of the Revenue Act of 1921 <sup>1</sup> communicated to the Ministry for Foreign Affairs in the Embassy's Note No. 91 of June 28, 1922.

The Embassy is informed further by the Treasury Department through the Department of State that, therefore, if the Minister of Commerce [Finance] will issue the same instructions to the financial authorities relative to citizens of the United States not residing in Germany as have been issued relative to domestic corporations, Germany will have satisfied the equivalent exemption provision referred to. The Embassy is informed, that as soon as the Treasury Department receives notice through this Embassy that the additional instructions have been issued, it will issue a statement that Germany has satisfied this exemption provision.

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<sup>1</sup> 42 Stat. 239.

If therefore the instructions referred to above are issued and the Ministry for Foreign Affairs will so inform the Embassy, the Embassy will take pleasure in telegraphing to the Department of State the date on which they become effective.

The Department of State would appreciate also being informed whether Germany has ever demanded or collected or under the law may demand any income tax from citizens of the United States not residing in Germany or domestic corporations on earnings derived from the operation of ships from January 1st, 1921, to the date on which the above instructions if issued become effective.

BERLIN, *October 8, 1923*

To the

MINISTRY FOR FOREIGN AFFAIRS,  
*Berlin.*

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*The Ministry for Foreign Affairs to the American Embassy*

[TRANSLATION]

FOREIGN OFFICE

No. V. Steu 30  
B 2556

#### NOTE VERBALE

The Foreign Office has the honor to inform the Embassy of the United States of America, in reply to the latter's note verbale of October 27, 1923 (No. 543), and supplementing its own note verbale of September 5, 1923 (V Steu 1496), that, by an ordinance dated January 5, 1924, the Federal Minister of Finance has instructed the competent financial authorities that incomes derived from the operation of ships by citizens of the United States of America (individual persons) who have no residence in Germany are likewise to be exempted from the income tax, under the condition of reciprocity and the reservation of repeal at any time, as has already been ordered by a proclamation of August 10, 1923, relating to American commercial companies as affected by the corporation tax.

Furthermore, according to the investigations undertaken by the German Government, citizens of the United States who have no residence in Germany, as well as American shipping companies which receive their incomes from the operation of ships, have not been subjected in Germany to either the income or the corporation tax since January 1, 1921.

The Foreign Office would be grateful for a statement as to whether now the Government of the United States of America will grant to German shipping companies and individual persons engaged in shipping the same

exemption from taxation of incomes derived from the operation of ships, and particularly so with retroactive effect from January 1, 1921.

BERLIN, *January 19, 1924*

TO THE EMBASSY OF THE  
UNITED STATES OF AMERICA

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*The American Embassy to the Ministry for Foreign Affairs*

NOTE VERBALE

No. 675

The Embassy of the United States of America presents its compliments to the Ministry for Foreign Affairs, and has the honor to refer to the latter's Note Verbale No. V Steu 30/B 2556 of January 19, 1924, concerning the question of the taxing by Germany of earnings derived from the operation of ships documented under the laws of the United States. As will be remembered, the Embassy, by its Note Verbale No. 299 of March 2, 1923, informed the Ministry for Foreign Affairs that a copy of the Note Verbale above referred to had been duly transmitted to the Department of State.<sup>2</sup>

The Embassy of the United States of America now has the honor to inform the Ministry for Foreign Affairs that an instruction has been received from the Department of State, transmitting a ruling received from the Treasury Department on this subject, with reference to the Foreign Office's note of January 19, 1924, requesting additional information on the following points:

"In the Ordinance of August 10, 1923, it is noted 'that in the case of companies operated for profit, whose domicile and place of management is in the United States of America, the income which is derived exclusively from the operation of ships, shall not be subjected to the corporation tax. A corporation tax return for the aforesaid income is not to be required of North American companies which maintain in this country a branch or other place of operation or a continuous representative.'

"Under this provision of the Ordinance of August 10, 1923, it appears that an American corporation whose place of management, for instance, is in London, might possibly be taxed while an American corporation whose place of management is in the United States or Germany, would be exempted. In order for individual Germans and German shipping companies to be entitled, under the provisions of American law, to the benefits of reciprocity in the matter of exemption from taxation, it would be necessary for the Ordi-

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<sup>2</sup> This statement is obviously incorrect. By its Note Verbale No. 299 of Mar. 2, 1923, the Embassy informed the Ministry for Foreign Affairs that a copy of the Note Verbale No. III A 3480/B-28707 of Nov. 2, 1922, had been transmitted to the Department of State.

nance of August 10, 1923, to apply to all corporations organized in the United States regardless of the place of management.

"Moreover, in order to enable the Government of the United States to pass upon the question as to whether equivalent exemption is applicable from January 1, 1921, the Treasury Department states that it will be necessary for the German Government to show that citizens of the United States non-resident as to Germany and domestic corporations have not been subjected to income and corporation tax since January 1, 1921, and the earnings derived from the operation of ships, and that they are exempt from such taxes and will not be required to pay the income and corporation tax on any income earned since January 1, 1921."

The Embassy of the United States of America begs further, in compliance with the request of the Department of State, that an early consideration of its response be given by the Foreign Office.

BERLIN, *May 5, 1924*

To the  
MINISTRY FOR FOREIGN AFFAIRS,  
*Berlin.*

*The Ministry for Foreign Affairs to the American Embassy*

[TRANSLATION]

FOREIGN OFFICE  
No. V Steu 1489  
B.34881

#### NOTE VERBALE

The Foreign Office has the honor to inform the Embassy of the United States of America, in response to the latter's Note No. 686 of May 16 last, relative to exemption from income tax of both German and American ship-owners, as follows:

The Federal Minister of Finance is now ready in principle to amend his order of August 10, 1923, in accordance with the wishes of the Government of the United States of America as conveyed in the Embassy's Note Verbale No. 675 of May 5, 1924, and to cause instructions to be issued to the subordinate financial authorities that the order of August 10, 1923, is to be applied to all companies which have their seat in the United States of America regardless of the location of their management.

As concerns the conditions for abstention from collection of taxes from January 1, 1921, referred to in the last-mentioned note verbale, the Foreign Office can only repeat the statement based on the official findings of the Federal Minister of Finance and contained in its Note No. V Steu 30 of

January 19, 1924—the statement that since January 1, 1921, the income from the operation of ships of American shipping companies and citizens who have no residence in Germany has not been subjected to the German income tax or corporation tax. Furthermore, the German Government will abstain from a supplementary collection of taxes for the period since January 1, 1921, if the American Government grants reciprocity. The statement previously made by the Foreign Office through the usual diplomatic channels is a binding official declaration of the German Government.

The Foreign Office requests the Embassy of the United States of America to inform its Government of the above and to acquaint the Foreign Office with the American Government's attitude as soon as possible so that, if an agreement is reached between the German and American Governments, the Federal Minister of Finance may issue suitable instructions to the financial authorities.

BERLIN, *September 3, 1924*

To

THE EMBASSY OF THE UNITED STATES OF AMERICA.

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*The American Embassy to the Ministry for Foreign Affairs*

NOTE VERBALE

No. 935

With reference to the Note Verbale <sup>No. V Steu 1489</sup><sub>B34881</sub> dated September 3, 1924, of the Ministry for Foreign Affairs in regard to the taxation by Germany of the earnings derived from the operation of ships documented under the laws of the United States, the Embassy of the United States of America presents its compliments to the Ministry and has the honor to state that it lost no time in transmitting the Note Verbale under reference to the Department of State and is now in receipt of instructions to invite the Ministry's attention to the following observations of the Treasury Department of the United States Government:

"After careful consideration, this Department is of the opinion that in view of the categorical statement of the German Government and the proposed amendment by the Commonwealth Minister of Finance to his order of August 10, 1923, Germany will meet the equivalent exemption provision of Section 213(b)(8) of the Revenue Act of 1924,<sup>3</sup> upon the issuance of the necessary orders referred to in the Note under consideration. The same opinion is herein expressed with respect to the years 1921, 1922 and 1923, under the provision of Section 213(b)(8) of the Revenue Act of 1921.<sup>4</sup>

<sup>3</sup> 43 Stat. 269.

<sup>4</sup> 42 Stat. 239.

“Accordingly, it is requested that the German Government be apprised that upon completion of the action proposed in the Note of the Foreign Office of September 3, 1924, the equivalent exemption provisions of Section 213(*b*)(8) of both the Revenue Acts of 1921 and 1924 will be satisfied and that the income of a non-resident alien or foreign corporation from sources within the United States which consists exclusively of earnings of a ship or ships documented under the laws of Germany will be exempt from Federal income tax and that such exemption will be applicable for the year 1921 and subsequent years. In this connection it should be pointed out that certain German shipping concerns have been granted until December 15th to complete their 1923 tax returns and it is desirable that this information be communicated to the German Government as expeditiously as possible. This Department would appreciate prompt advice of the action of the competent German authorities.”

It is to be observed from the foregoing that the Treasury Department refers to the categorical statement of the German Foreign Office “that the German Government will abstain from a supplementary collection of taxes for the period since January 1, 1921, if the American Government grants reciprocity” and that this statement is a “binding official declaration of the German Government.” It will also be observed that the Treasury Department states that in view of this categorical statement and a proposed amendment by the Commonwealth Minister of Finance to his Order of August 10, 1923, it considers that the German Government will meet the equivalent exemption provision of Section 213(*b*)(8) of the Revenue Act of 1924 upon the issuance of the necessary orders referred to in the Ministry’s Note of September 3, 1924, under reference. The Treasury Department expresses the same opinion with respect to the years 1921, 1922 and 1923 under the provision of Section 213(*b*)(8) of the Revenue Act of 1921.

In bringing the foregoing to the attention of the Ministry, the Embassy is instructed to point out that upon the completion of the action proposed in the Ministry’s Note of September 3, 1924, the equivalent exemption provision of Section 213(*b*)(8) of both of the Revenue Acts of 1921 and 1924 will be satisfied and that the income of a nonresident alien or foreign corporation from sources within the United States which consists exclusively of earnings of a ship or ships documented under the laws of Germany will be exempt from Federal income tax and that such exemption will be applicable for the year 1921 and subsequent years.

In view of the statement of the Treasury Department that certain German shipping concerns have been granted until December 15th to complete their 1923 tax returns, the Ministry will appreciate the desirability of advising the Embassy as soon as possible with respect to the action taken by the German authorities in the matter of the proposed amendment by the Minister of Fi-

nance of his Order of August 10, 1923, so that the Treasury Department of the United States Government may, in turn, be definitely advised in the premises.

BERLIN, *November 29, 1924*

To the  
MINISTRY FOR FOREIGN AFFAIRS,  
*Berlin.*

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*The Ministry for Foreign Affairs to the American Embassy*

[TRANSLATION]

FOREIGN OFFICE  
No. V Steu. 1998  
B. 49423

NOTE VERBALE

Referring to Note Verbale No. 935, dated November 29, concerning the taxation of shipping companies of both countries, the Foreign Office has the honor to inform the Embassy of the United States of America that, in accordance with the proposal transmitted in the Foreign Office's note verbale of September 3, 1924 (V Steu 1489), the Federal Minister of Finance has now, by an order dated December 9, 1924, instructed the subordinate financial authorities to apply the order of August 10, 1923, to all companies which have their seat in the United States of America regardless of the location of their management.

Thus, according to the note verbale of the Embassy of the United States of America of November 29, the conditions are fulfilled in order that, beginning January 1, 1921, the incomes derived from the operation of ships by German citizens who are not residents of the United States of America, and by companies with their seat in Germany, are exempt from the income tax in the United States of America.

Since, according to the note verbale of the Embassy of the United States of America dated November 29, the period granted for the filing of tax declarations expires on December 15 for certain German shipping companies, the Foreign Office would greatly appreciate it if the Embassy of the United States of America would inform its Government *by telegraph* of the change made in the order of the Ministry of Finance of August 10, 1923.

BERLIN, *December 11, 1924*

To the  
EMBASSY OF THE UNITED STATES OF AMERICA.



*The American Embassy to the Ministry for Foreign Affairs*

No. 1103

## NOTE VERBALE

The Embassy of the United States of America presents its compliments to the Ministry for Foreign Affairs and has the honor to refer to its note verbale No.  $\frac{\text{V Steu 1998}}{\text{B 49423}}$  of December 11, 1924, concerning the taxation by Germany of the earnings derived from the operation of ships documented under the laws of the United States.

The Embassy is in receipt of an instruction from its Government stating that, according to advices received from the Secretary of the Treasury of the United States, Germany is now considered to have satisfied the equivalent exemption provision of Section 213(b)(8) of both the Revenue Acts of 1921 and 1924, and that accordingly the income of a non-resident alien or foreign corporation from sources within the United States which consists exclusively of earnings of a ship or ships documented under the laws of Germany is exempt from Federal income tax and such exemption is applicable for the year 1921 and subsequent years.

BERLIN, *March 20, 1925*

To the  
MINISTRY FOR FOREIGN AFFAIRS,  
*Berlin.*